

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|--------------------------|-------------------|
| Michael McCole, | : |
| Petitioner | : |
| vs. | : DC No. 04-261 E |
| PA Board of Prob;ation & | : |
| Parole, | : |
| Respondent | : |

**BRIEF IN SUPPORT OF PETITIONER'S MOTION TO
AMEND HABEAS CORPUS PETITION**

Procedural History

Petitioner Michael McCole is proceeding pro-se and in forma pauperis in this state habeas corpus action against the PA Parole Board alleging violations of the U.S. Ex Post Facto Clause.

The Petition for Writ of Habeas Corpus has been served upon the Respondents who answered the Petition, filing its answer and serving a copy of the same upon Petitioner. In turn, Petitioner filed a Traverse to the Answer. The Court has not ruled upon the outstanding Petition for Writ of Habeas Corpus, the Respondents' answer nor the traverse.

Petitioner now seeks to add an issue to the petition for writ of habeas corpus. This Brief is in support of a motion to amend the petition. Additionally, a copy of the proposed amendment is attached to the Motion to Amend.

Argument

In accordance with the Federal Rules of Civil Procedure, leave to amend should normally be freely given especially when justice so requires.

In this case justice would require that Petitioner be provided the opportunity to amend his habeas corpus petition with a due process issue alleging that the Respondents' participation in the 1996--2001 Violent Offender Incarceration/Truth-In-Sentencing caused an abrogation of Respondents duty to review Petitioner's parole applications in accordance with specific criteria set forth in Purdon's Title 61 Section 331.19.

This amendment would not delay the just disposition of this case.

In addition, Petitioner is not seeking to delay this case with the filing of a skeptical amendment. Most recently, the Third Circuit Court of Appeal ruled that all constitutional claims against the Parole Board, other than ex post facto claims, need not be exhausted through the state court system. Defoy v. McCullough, 2005 (WL 148089 (C.A.3 (Pa.) 2005).

Wherefore, Petitioner Prays in Relief that the Court issue an Order granting his Motion to Amend the Habeas Corpus Petition.

Respectfully submitted,



Michael McCole

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MICHAEL McCOLE,)
Petitioner,)
vs.) CIVIL ACTION NO. 04-261E
PA BD OF PROBATION & PAROLE,)
Respondent)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Brief in Support and Motion to Amend the Writ of Habeas Corpus was served upon the following individual via pre paid first-class mail on 15th July 15th, 2005:

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